

Exhibit X

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION

RAMON ARMAS BORROTO, JR.

Plaintiff,

vs.

Case No. 5:04CV165-RH/WCS

MCDONALD, PATE, SPEIGHT,
MCKENZIE and KENT.

Defendants.

STATE OF FLORIDA
JACKSON COUNTY

Affidavit of Nurse Donna Kent

BEFORE ME, the undersigned authority, personally appeared Nurse Donna Kent, who first after being duly sworn deposes and states the following:

1. I am over the age of twenty-one years and have personal knowledge of the facts stated herein.
2. I am presently employed by the Florida Department of Juvenile Justice.
3. I previously worked in the Department of Corrections as a nurse at Washington C.I.
As a nurse, one of my duties was to make rounds in confinement and close management units.
4. I have conducted medical exams on hundreds of inmates. It was my practice to document my exams. Although this is a standard medical practice, I was conscientious about

documenting exams to address grievances or complaints by inmates about the care they received from me.

5. If I made a chart entry or notation about an inmate, it was because I examined the inmate. I deny Mr. Borroto's allegation that I fabricated the entry in his chart for November 28, 2002.
6. At the time of November 28, 2002, medical rounds were made in confinement and close management units daily. There was no exception for weekends and holidays.
7. The Inspection of Special Housing Record for G-dorm on November 28, 2002, bears my initials written by me to indicate that I entered the unit at 8:30 a.m. Exhibit 1. When I made rounds in G dorm, I had to go to all four quads and pass by every cell. If an inmate indicated having a medical complaint I would generally arrange with the dormitory staff to pull that inmate out for examination after I finished my walk-through. These examinations were generally conducted in what is considered the medical room of the dorm.
8. I have reviewed the medical chart entry I made in regarding Ramon Borroto, #X27467, on November 28 2002. See Exhibit 2. My entry indicates that I had Mr. Borroto pulled out for examination because he complained of a lingering sinus problem. See Exhibit 2. I took his vital signs which were within normal limits. See Exhibit 2. I observed no runny nose, no cough, and no sneezing. I found that Mr. Borroto had clear lungs and breathed with ease. See Exhibit 2. I considered Mr. Borroto's sinusitis questionable. I determined that Mr. Borroto did not need medical intervention at the time of my evaluation. See Exhibit 2.

9. I often finished paperwork after I had concluded the confinement or close management examinations. Therefore, the time I wrote on the charts was often an approximation.
10. Medical staff did not have to record our departure times in the Inspection of Special Housing Record.
11. Given the number of inmate examinations I have conducted, I do not remember Mr. Borroto specifically. I have relied upon the chart entry of November 28, 2002, to give this affidavit.
12. Mr. Borroto has alleged that, on November 28, 2002, while in my presence, Officer McDonald punched him in the stomach many times, then punched him in the ear and on his head, and then put Borroto's head between his legs picked him up and slammed him on his head. Though I do not remember the examination of Mr. Borroto specifically, I can say with certainty that I did not witness a physical assault upon Mr. Borroto by Officer McDonald such as Borroto has alleged.
13. I have been advised that Mr. Borroto has recently filed a submission with this court stating that he was masturbating when speaking with me at his cell door. I do not recall one way or the other if this is true. Nevertheless, inmates who engaged in inappropriate behavior such as this were not refused medical attention. Though I do not recall whether Mr. Borroto engaged in the inappropriate action he now alleges, it is evident by his chart that I did not refuse to examine him for his sinus complaint.

FURTHER AFFIANT SAYETH NAUGHT

Affiant

The foregoing instrument was sworn to and subscribed
before me this 30th day of January, 2006
by Donna Kent, who is:

_____ personally known to me

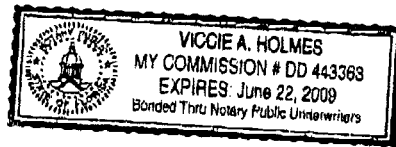
☒ produced identification FL DL [REDACTED]

Viccie A. Holmes

Notary Public

Viccie A. Holmes

My Commission Expires:



STATE OF FLORIDA
DEPARTMENT OF CORRECTIONS

INSPECTION OF SPECIAL HOUSING RECORD

Institution WashingtonHousing Area G

| DATE | TIME | INITIALS | REMARKS | DATE | TIME | INITIALS | REMARKS |
|----------|---------|-----------|-------------------------|-------|--------|-----------|------------------------|
| | | | HALF on in Room | 11-28 | 3:11pm | B. McKeay | Outside Building |
| | | | FOR ROOMS. | | | | check complete. |
| 11-28 | 8:30 | BT | med rounds | 11-28 | 3:15pm | B. McKeay | Food carts in |
| 11-28 | 8:31 | BT | SEC check | 11-28 | 3:20pm | B. McKeay | Off Stebbins + 2 I/M's |
| 11-28-02 | 8:59 | BT | SEC check | | | | feeding in G1 + G2 |
| 11-28-02 | 9:17 | BT | SEC check | | | | Off. Oney + 2 I/M's |
| 11-28-02 | 9:33 | BT | SEC check | | | | feeding in G3 + G4 |
| 11-28-02 | 9:35 | BT | Off. Oney in | | | | Formal Count = G1=54 |
| | | | TO Pass out Laundry | | | | G2=28, G3=24, G4=43 |
| | | | ORDERS | | | | T/C = 149 |
| 11-28-02 | 10:00am | BT | SEC check | 11-28 | 3:30pm | B. McKeay | security check |
| 11-28-02 | 10:15A | C. Smith | Food carts in | 11-28 | 3:35pm | B. McKeay | Clear count |
| 11-28-02 | 10:36A | BT | Formal Count T=149 | 11-28 | 4:00P | BT | Sec. ck ok |
| | | | YSA 428-324 443 | 11-28 | 4:00P | BT | SEC check |
| | | | door lock check | 11-28 | 4:30P | B. McKeay | security check |
| 11-28-02 | 10:50 | BT | Clear count | | | | food carts out |
| 11-28-02 | 11:00 | BT | SEC check | 11-28 | 4:40pm | B. McKeay | Nurse exits down |
| 11-28-02 | 11:05 | BT | SEC check | 11-28 | 4:55p | B. McKeay | Formal count |
| 11-28-02 | 11:30P | BT | Begin Programs, | | | | G1=54 G2=28 |
| | | | UP STAIRS | | | | G3=24 G4=43 |
| 11-28-02 | 11:50A | BT | SEC check | | | | T/C = 149 |
| 11-28-02 | 12:10P | BT | Formal Count T=149 | 11-28 | 5:15pm | B. McKeay | Clear count |
| | | | YSA 428-324 443 | 11-28 | 5:00pm | B. McKeay | security check |
| 11-28 | 12:20P | BT | Clear count | 11-28 | 5:30pm | B. McKeay | security check |
| 11-28-02 | 12:55 | BT | SEC check | 11-28 | 6:00p | B. McKeay | security check |
| 11-28-02 | 1:29 | BT | SEC check | | | | start program G1 |
| 11-28-02 | 2:00pm | BT | SEC check | 11-28 | 6:30p | B. McKeay | security check |
| 11-28-02 | 2:39P | BT | SEC check | 11-28 | 6:50p | B. McKeay | Capt. Riggins in |
| 11-28-02 | 3:00P | BT | 2nd shift | | | | OLC check |
| 11-28-02 | 3:00P | BT | 3rd shift on duty | 11-28 | 7:00p | B. McKeay | security check |
| | | | ALL KEYS AND EQUIPMENT | 11-28 | 7:15p | B. McKeay | FBA # 144 tested |
| | | | AND OTC MEDS. SENT | 11-28 | 7:30p | B. McKeay | security check |
| | | | FROM 2ND SHIFT | 11-28 | 8:00p | B. McKeay | security check |
| | | | Sgt. McKeay OFC Langley | | | | Sgt. English in |
| | | | OTC MEDS. OFC SHUTTS | | | | for DR's |
| | | | OTC ONLY OFC STEBBINS | 11-28 | 8:30p | B. McKeay | security check |
| | | | SHIFT OTC Capt. Riggins | | | | showers in G3 |
| 11-28 | 3:05pm | B. McKeay | All doors, locks and | | | | + G4 complete |
| | | | windows physically | 11-28 | 8:50P | BT | IN HOUSE MEDS. I/M |
| | | | checked and secure. | | | | FOR DR. DANIEL 421166 |
| | | | G1=54, G2=28, G3=24 | | | | FROM G22411 TO G4 205L |
| | | | G4=43, T/C=149 | 11-28 | 8:55P | BT | Count RECALL |

INSTRUCTIONS:

One copy only of this form is to be maintained in each special housing in the institution. Correctional Officers in charge, medical staff representatives, and Disciplinary Committee members are to initial this form each time they make required visits to inmates in special housing. These initials indicate that all inmates located in the housing area have been checked. A minimum number of visits is required by directive. However, if visits are made more frequently, an entry should be made on this form at the time of each visit.

Under "remarks" note the name and number of any inmate who requires special handling and give a brief explanation, using as much space as required. The supervising officer on duty, medical staff, or Disciplinary Committee members should enter subsequent information concerning this inmate on the "Daily Record of Segregation" Form DC6-229 for that inmate.

When this form is completely filled, it should be maintained as a permanent record of the institution.



FLORIDA DEPARTMENT OF CORRECTIONS
Chronological Record of Health Care

| | |
|--------------------------|--|
| Allergies: <i>Pollen</i> | |
| DATE/TIME | |
| <i>11-28-02</i> | <i>915 - S. C/o sinus problems still</i> |
| <i>T489</i> | <i>D - pulled out for eval. No runny nose</i> |
| <i>P-81</i> | <i>noted. No cough while observed. No</i> |
| <i>R18</i> | <i>sneezing. lungs clear. Resp & card</i> |
| | <i>A - ? sinusitis</i> |
| | <i>P - no intervention needed @ flus &</i> |
| | <i>D. J. KENT, SLPN</i> |
| | <i>WASHINGTON C.I.</i> |

Borroto, Ramon Armas
 DC# X27467
 W/M DOB: 11/22/81
 Allergies: POLLEN, NKDA

S- Subjective Data
 O- Objective Data
 A- Assessment of S and O Data
 P- Plan

Exhibit Y

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION

RAMON ARMAS BORROTO, JR.

Plaintiff,

vs.

Case No. 5:04CV165-RH/WCS

MCDONALD, PATE, SPEIGHT,
MCKENZIE and KENT.

Defendants.

STATE OF FLORIDA
LEON COUNTY

Affidavit of Tim Yaw

BEFORE ME, the undersigned authority, personally appeared Inspector Tim Yaw, who first after being duly sworn deposes and states the following:

1. I am over the age of twenty-one years and have personal knowledge of the facts stated herein.
2. I am presently employed by the Florida Department of Corrections, in the Bureau of State Investigations, as Inspector Supervisor for the Tallahassee Field Office, in Leon County, Florida.
3. As Inspector Supervisor, my duties and responsibilities include oversight of all investigations in Institutional Region I.
4. On March 5, 2003, I submitted a Report of Investigation to the Inspector General for the Department regarding the allegation of Inmate Ramon Borroto, # X27467, that he had been physically abused at Washington Correctional Institution on the morning of November 28, 2002. See exhibit 1 (Report of Investigation #02-13942). Borroto alleged that Correctional Officer

Larry McDonald hit him with his fists and then picked him up, turned him “upside down” and dropped him on his head. See exhibit 1, at p. 2. Borroto alleged that this incident was witnessed by Nurse Kent, Sergeant McKenzie, and Officer Pate. See exhibit 1, at p. 2. The evidence obtained during the course of the investigation was not sufficient to support the allegation of physical abuse by Officer McDonald. See exhibit 1, at p. 3; See exhibit 2 (Corrective Action/Disposition Report). The witness statements and the minor injuries found contradict the allegation.

4. Sergeant McKenzie, Officer Pate, and Nurse Kent stated the incident did not happen as did Officer Butts, Anderson, and Speights who were on duty in “G” dormitory on November 28, 2002. See exhibit 1, at p. 2. Officer McDonald denied physically abusing Inmate Borroto. See exhibit 1, at p. 2.

5. Nurse Conger examined Borroto at the time he made his complaint of staff abuse and that record was made part of the Report of Investigation. The medical record indicates he was found to have a small edema or mark on the rear of his head and slight bruising and redness on his left ear lobe. The Nurse’s assessment of Borroto on discharge was “good.” Based on my past experience, such indications are inconsistent with the allegations of abuse made by Borroto. It is entirely possible that the minimal injuries noted by Nurse Conger came from another source.

6. Borroto was transferred to Santa Rosa on December 19, 2002, after meeting with Inspector Kraus. Inspectors customarily order transfers in cases where inmates allege physical abuse. Such an order does not necessarily imply a conclusion that the inmate’s allegation is substantiated. The measure is a precautionary one. Once an inspector receives a case, the assigned inspector is responsible for the well being of the inmate and the integrity of the investigation. The typical coding for such a transfer is “population adjustment.”

7. In Borroto's case, he was transferred prior to the conclusion of the investigation. His transfer was coded as a "population adjustment." This is consistent with precautionary transfers.

8. Unfortunately, inmates are aware that allegations of physical abuse will often result in an IG transfer. It is not uncommon for inmates to fabricate allegations of abuse to exploit this precautionary measure.

9. Inmate Borroto has in fact made other allegations of abuse or mistreatment that have triggered IG investigations. One was made prior to report # 02-13942, and six were made afterwards. **In no case has Borroto's allegation been substantiated.** Five were deemed unsubstantiated; two were staff exonerations.

FURTHER AFFIANT SAYETH NAUGHT



Tim Yaw, Affiant

11-14-05
Date

Sworn and Subscribed before me, a sworn Law Enforcement Office for the State of Florida:



Robert Lancaster, Law Enforcement Sr. Inspector

11/14/05
Date

Exhibit Z

**STATE OF FLORIDA
DEPARTMENT OF CORRECTIONS
OFFICE OF THE INSPECTOR GENERAL**

INVESTIGATION: # 02-13942

DATE: March 5, 2003
FROM: Tim Yaw, Senior Inspector
TO: Walton C. Murphree, Jr., Acting Inspector General



**REPORT OF INVESTIGATION
OFFICE OF THE INSPECTOR GENERAL
DEPARTMENT OF CORRECTIONS**

INVESTIGATION # 02-13942

CORRECTIONAL INVESTIGATOR: Tim Yaw

DATE OF REPORT: March 5, 2003

DATE OF INCIDENT: November 28, 2002

CLASSIFICATION OF COMPLAINT/INCIDENT: Physical Abuse

LOCATION: Washington Correctional Institution

COMPLAINANT: Scott, Timothy
Correctional Officer Captain
W/M, DOB: 10/28/62

VICTIM(S): Borroto, Ramon
DC#-X27467
W/M, DOB: 11/22/81

SUBJECT(S): McDonald, Larry
Correctional Officer
B/M, DOB: 11/08/53

WITNESS(ES): McKenzie, Channing
Correctional Officer Sergeant
W/M, DOB: 12/07/67

Pate, Harold
Correctional Officer
W/M, DOB: 01/07/69

Kent, Donna
Sr. Licensed Practical Nurse
W/F, DOB: 08/08/64

Butts, Travis
Correctional Officer
W/M, DOB: 07/06/69

Investigative Report # 02-13942

Page 2

WITNESSES CONTINUED:

Anderson, Cleo
Correctional Officer
W/M, DOB: 06/15/50

Speights, Mervis
Correctional Officer
B/M, DOB: 06/01/67

Brooks, David
DC#-982838
B/M, DOB: 07/17/73

CASE SUMMARY:

Inmate Borroto reported to Captain Scott on November 29, 2002, at about 12:15am, that he had been physically abused on the morning of November 28, 2002. Captain Scott reported the information, which was later forwarded to the Tallahassee Field Office on December 2, 2002. The case was assigned to Inspector Jon Kraus on December 2, 2002, and reassigned to Inspector Tim Yaw on January 27, 2003.

Captain Scott reported that he was making his rounds in "G" dormitory at about 12:15am on November 29, 2002, when Inmate Borroto told him that he had been abused earlier the day before. He had Inmate Borroto examined by medical where it was found that Inmate Borroto had a bruised left ear lobe with redness. Inmate Borroto stated to investigators that he was taken from his cell at about 8:45am, on November 28, 2002, and into the hearing room where Officer McDonald hit him with his fists and then picked him up, turned him "upside down" and dropped him on his head. When Officer McDonald attempted to hit his head on the floor again, Nurse Kent told him to stop. Sergeant McKenzie and Officer Pate were also in the room at the time. Inmate Borroto was transferred to Santa Rosa Correctional Institution on December 19, 2002.

Sergeant McKenzie, Officer Pate and Nurse Kent stated that the incident did not happen as did Officers Butts, Anderson and Speights who were on duty in "G" dormitory on November 28, 2002. Officer McDonald denied physically abusing Inmate Borroto. Inmate David Brooks was Inmate Borroto's cellmate at the time and he refused to give a statement.

Inmate Borroto was given a Computerized Voice Stress Analysis (CVSA) which indicated he was not deceptive when he responded "Yes" when he was asked if other staff were present when Officer McDonald hit him and if Nurse Kent was present when Officer McDonald dropped him on his head.

Investigative Report # 02-13942

Page 3

Review of the video tape-recording of quad four in "G" dormitory during the morning of November 28, 2002, revealed that Inmate Borroto was not taken out of his cell and that no one entered his cell.

SUBJECT: Larry McDonald, Correctional Officer

The evidence obtained during the course of this investigation is not sufficient to support the allegation of *Physical Abuse* by Officer McDonald. This is based on the following:

- **Witness Statements:**

Inmate Ramon Borroto stated that he was taken out of his cell at about 8:45am, on November 28, 2002, and into the hearing room where Officer McDonald hit him with his fists and then picked him up, turned him "upside down" and dropped him on head. When Officer McDonald attempted to hit his head on the floor again, Nurse Kent told him to stop.

Sergeant Channing McKenzie, Officer Harold Pate and Nurse Donna Kent indicated that the alleged incident did not occur.

Officers Travis Butts, Cleo Anderson and Mervis Speights were on duty in "G" dormitory on November 28, 2002, and they indicated that they did not see Inmate Borroto being abused, nor did they remember him coming out of his cell that day.

Inmate David Brooks would not give a statement concerning the incident.

- **Written Documents:**

A CVSA report from Inspector James Keen indicated that Inmate Borroto was not deceptive when he answered "Yes" when he was asked if other staff were present when Officer McDonald hit him and if Nurse Kent was present when Officer McDonald dropped him on his head.

- **Other Pertinent Information:**

Review of the video tape-recording of quad four in "G" dormitory during the morning of November 28, 2002, revealed that Inmate Borroto was not taken out of his cell and that no one entered his cell between the hours of 7:00am and 11:00am.

Investigative Report # 02-13942

Page 4

- **Subject Statements:**

Officer Larry McDonald denied physically abusing Inmate Borroto.

ALLEGATION:

Inmate Ramon Borroto alleged that Officer Larry McDonald physically abused him on the morning of November 28, 2002, in "G" dormitory.

FINDING(S):

In an affidavit taken on November 29, 2002, and during a sworn, tape-recorded interview conducted on December 19, 2002, Inmate Ramon Borroto indicated the following:

At about 8:45am, on November 28, 2002, he was taken out of his cell by Officers McDonald and Pate and escorted to the hearing room. Sergeant McKenzie and Nurse Kent were in the room when they arrived. Officer McDonald began hitting him in the stomach and head, while the others watched. Officer McDonald then put his (*Borroto's*) head between his knees and grabbed him by his feet, slamming his head into the floor. As Officer McDonald grabbed his feet to slam his head into the floor again, Nurse Kent told him to stop. Nurse Kent and Sergeant McKenzie left the room and Officers McDonald and Pate escorted him back to his cell. He reported the incident on November 29, 2002, to Captain Scott who was the supervisor of the midnight shift. He received a bruise on his left ear from the abuse. **(Exhibit A-1) (Exhibit B-1)**

In an incident report dated November 29, 2002, Captain Timothy Scott reported the following:

At about 12:10am on November 29, 2002, Inmate Borroto declared a medical emergency during which he stated that four officers took him into the "room with no cameras" at about 8:45am, on November 28, 2002, and Officer McDonald hit him and slammed his head into the floor. Inmate Borroto indicated that Nurse Kent was present during the incident. He had Inmate Borroto examined by the medical department. **(Exhibit A-2)**

Medical records indicated that Inmate Borroto was examined by Nurse Conger at 12:26am, on November 29, 2002, and he was found to have a small edema or mark on the rear of his head and slight bruising and redness on his left ear lobe. **(Exhibit A-3)**

Inspector James Keen conducted a Computerized Voice Stress Analysis (*CVSA*) on Inmate Borroto. In his report dated January 15, 2003, Inspector Keen indicated that Inmate Borroto was not deceptive when he answered "Yes" when asked if other staff were present when McDonald hit his ear and if Nurse Kent present when McDonald dropped him on his head. **(Exhibit A-4)**

Investigative Report # 02-13942

Page 5

Records revealed that Officers Travis Butts, Cleo Anderson and Mervis Speights were on duty in "G" dormitory on the morning of November 28, 2002, and they gave sworn, tape-recorded statements on February 4, 2003, indicating they did not witness any abuse of Inmate Borroto.

(Exhibits B-2, B-3 & B-4)

During sworn, tape-recorded interviews conducted on February 4, 2003, Nurse Donna Kent, Sergeant Channing McKenzie and Officer Harold Pate indicated that they were not in a room with Inmate Borroto or any other inmate when such an incident happened. All said they did not see Inmate Borroto get physically abused.

(Exhibits B-5, B-6 & B-7)

Records revealed that Inmate David Brooks was Inmate Borroto's cellmate on November 28, 2002, and upon attempting to interview him on February 18, 2003, concerning the allegation, he refused to give a statement.

Records revealed that Inmate Borroto was housed in "G" dormitory, quad four, cell 101 lower, on November 28, 2002. Review of the video tape-recording of quad four from 7:00am until 11:00am on that date, revealed that Inmate Borroto did not come out of his cell, nor did anyone enter his cell during that time. The video revealed Officers McDonald and Speights entering the quad at 8:43am to conduct a security check. They departed the quad at 8:46am. Nurse Kent did not enter the quad during that time.

(Exhibit B-9)

"G" dormitory logs for November 28, 2002, recorded activity that was consistent with the video recording of quad four. The logs indicated that Nurse Kent entered "G" dormitory for sick call rounds, but it was not indicated at what time she departed the dormitory.

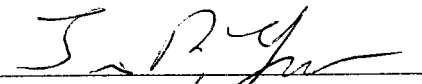
(Exhibit A-5)

During a sworn, tape-recorded interview conducted on February 4, 2003, Officer Larry McDonald indicated that he did not know Inmate Borroto and he denied physically abusing him or any other inmate.

(Exhibit B-8)

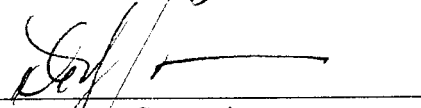
INVESTIGATION # 02-13942

SIGNATURE:

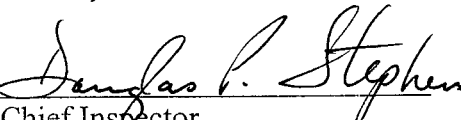

Senior Inspector

2-27-03
Date

REVIEWED BY:


Inspector Supervisor

2/27/03
Date


Chief Inspector

3/3/03
Date

EXHIBITS/ATTACHMENTS SECTION

INVESTIGATION # 02-13942

A. EXHIBIT - attached

1. Affidavit from Inmate Ramon Borroto.
2. Incident report from Captain Timothy Scott.
3. Copy of medical examination report for Inmate Ramon Borroto.
4. CVSA report from Inspector James Keen dated January 15, 2003.
5. G dormitory logs dated November 28, 2002.

B. EXHIBIT -- not attached

1. Tape-recorded interview of Inmate Ramon Borroto.
2. Tape-recorded interview of Sergeant Channing McKenzie.
3. Tape-recorded interview of Officer Harold Pate.
4. Tape-recorded interview of Nurse Donna Kent.
5. Tape-recorded interview of Officer Cleo Anderson.
6. Tape-recorded interview of Officer Mervis Speights.
7. Tape-recorded interview of Officer Travis Butts.
8. Video tape-recording of G dormitory on November 28, 2002.

DEPARTMENT OF CORRECTIONS
OFFICE OF THE INSPECTOR GENERAL

Investigation # 02-13942**AFFIDAVIT**

The affiant shall be asked to raise his or her right hand. The correctional officer shall then be asked:
DO YOU SOLEMNLY SWEAR OR AFFIRM THAT YOUR STATEMENT SHALL BE THE TRUTH,
THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH?"
On receiving an affirmation response, the officer may proceed to make statement.

BEFORE ME THIS DATE PERSONALLY APPEARED RAMON BORRUTO
(Affiant Name)
WHO, BEING DULY SWORN, DEPOSES AND SAYS:

Complete description of incident(s):

I WAS pulled out of my cell at APPROX. 8:45 AM on 11/28/02. I WAS
called into the "room with no cameras" as the officers like to call it. In this room
were 4 officers, Off. MacDonald, Off. Pate, Sgt. McKenzie, and another off. which
I don't know their names. Also the nurse was present. Officer MacDonald began
punch me in my stomach. He did this ~~several~~ (RB) many times. Then punch me in
my ear and head. He put my head between his legs, picked me up and slammed
me on my head. I have several witnesses to this which can verify that
I came back with a black and blue ear and in much pain. (RB) During the
entire incident I was in handcuffs. I write this affidavit with complete
honesty and truth. (RB)

Name of affiant: RAMON ARMAS BORRUTOInmate: RAMON BORRUTO X27467Facility: WASHINGTON C.I.Inmate #: X27467 Race: W Sex: M Date of Birth: 11/22/81

Signature of Affiant

11/29/02
Date

Subscribed before me this 29 day of November, 2002.

M.P. [Signature]
Signature of Officer

C.O. I

DEPARTMENT OF CORRECTION

INCIDENT REPORT

REPORTING INSTITUTION: Washington CI REPORT NUMBER: 02011-192
 REPORTING OFFICER: Capt Jim Scott DATE OF INCIDENT: 11-29-02
 NAME(S) INVOLVED: Boroto, Ramon X27467 TIME OF INCIDENT: 12:10AM
Sgt Harry McDonald, Sgt C McKenzie WITNESS(ES):
ofc Harold Pate, Nurse Kent

DESCRIPTION OF INCIDENT: On 11-29-02, at approximately 12:10AM while
working as First Shift Supervisor I was advised by Sgt
Ramon D-Dorm Supervisor that, Jim Boroto, Ramon X27467
declared a medical Emergency and during this emergency
alleges that at approximately 845AM on 11-28-02 he
was pulled into the room with no cameras. In this room
four officers, ofc McDonald, ofc Pate, Sgt McKenzie and
he ofc he didn't know, Nurse Kent was also present. Ofc
Pate began to punch him in the stomach, head and ~~ear~~ ear
and put my head between his legs picked me up and
Capt Jim Scott 11-29-02
 REPORTING EMPLOYEE DATE

OFFICER'S COMMENT: Jim was checked by medical, Jim completed an Affidavit
was placed back into his cell 64-1012, Jim wasn't in
of his life. Affidavit attached. EAC Duty ofc Hall notified.
Warden Col Liff notified. E-form completed. Nurse Kent
conducting sick call in D-Dorm at this time and been
on allergies.

Capt P. Liff 11-29-02
 OFFICER IN CHARGE DATE

RECOMMENDATION: Forward to Inspector for E-Form Completion
due to allegations of abuse against staff.

12/1/02
 CORRECTIONAL OFFICER CHIEF DATE

RECOMMENDATION: Forward to Inspector for further review.

12/1/02
 WARDEN DATE

STATE OF FLORIDA
DEPARTMENT OF CORRECTIONS

PLEASE PRINT

EMERGENCY ROOM RECORD

AUTHORIZATION FOR HEALTH CARE SERVICES

The undersigned, a patient in this health care facility, has had explained to me and understand the nature of my condition. I hereby authorize the medical staff to administer such treatment as is necessary, and to perform evaluation and treatment and such additional health care services as are considered necessary on the basis of findings during the course of said health care service. Any tissue or parts surgically removed may be disposed of by the facility in accordance with accustomed practice. I hereby certify that I have read and fully understand the above authorization for health care services, the reasons why the above-named health care service is considered necessary, its advantages and possible complications, if any, as well as possible alternative modes of treatment, which were explained to me by J. Conger SRN. I also certify that no guarantee of assurance has been made as to the results that may be obtained.

Signature of Patient X J. Conger Date 11-29-02 Time 0026Witness Signature/Stamp J. Conger J. CONGER, SRN Date 11-29-02 Time 0026
Brief History: Washington Ct

I/m alleges assault by staff @ approx. 0845 on 11-28-02.
See DC4-708. States he was hit on back of head, ears,
& abdomen.

If accident, state where, when and how injured; if illness, describe:

VS: T °F P 96 /Min. R 20 /Min. BP 140, 92 Wt. lbs.Condition on Admission (Circle): Good Fair Poor Shock Bleeding ComatoseFindings/Treatment: Rear of head + abd. S edema or marks. ① ear lobe E bruising, edema +
approx. 1cm red line.Labs Ordered: ØTherapy Ordered: ØLab Reports: Ø

Inmate Response to Treatment:

WNL

Diagnosis:

alleged assault

Condition on Discharge:

good.

Discharge Instructions and Education:

F/U sick call PRNDisposition (Circle): Population Confinement Infirmary Hospital Rescue Other (explain):Health Care Provider's Signature and Stamp: J. Conger J. CONGER, SRN Date/Time: 11-29-02 0026
Washington CtReviewing Physician's Signature and Stamp: J. Spann MD J. SPANN, MD Date/Time:
CHIEF HEALTH OFF

I:

C:

C:

I:

E:

D:

Borroto, Ramon Armas

DC# X27467

W/M DOB: 11/22/81

Allergies: POLLEN, NKDA

Distribution:

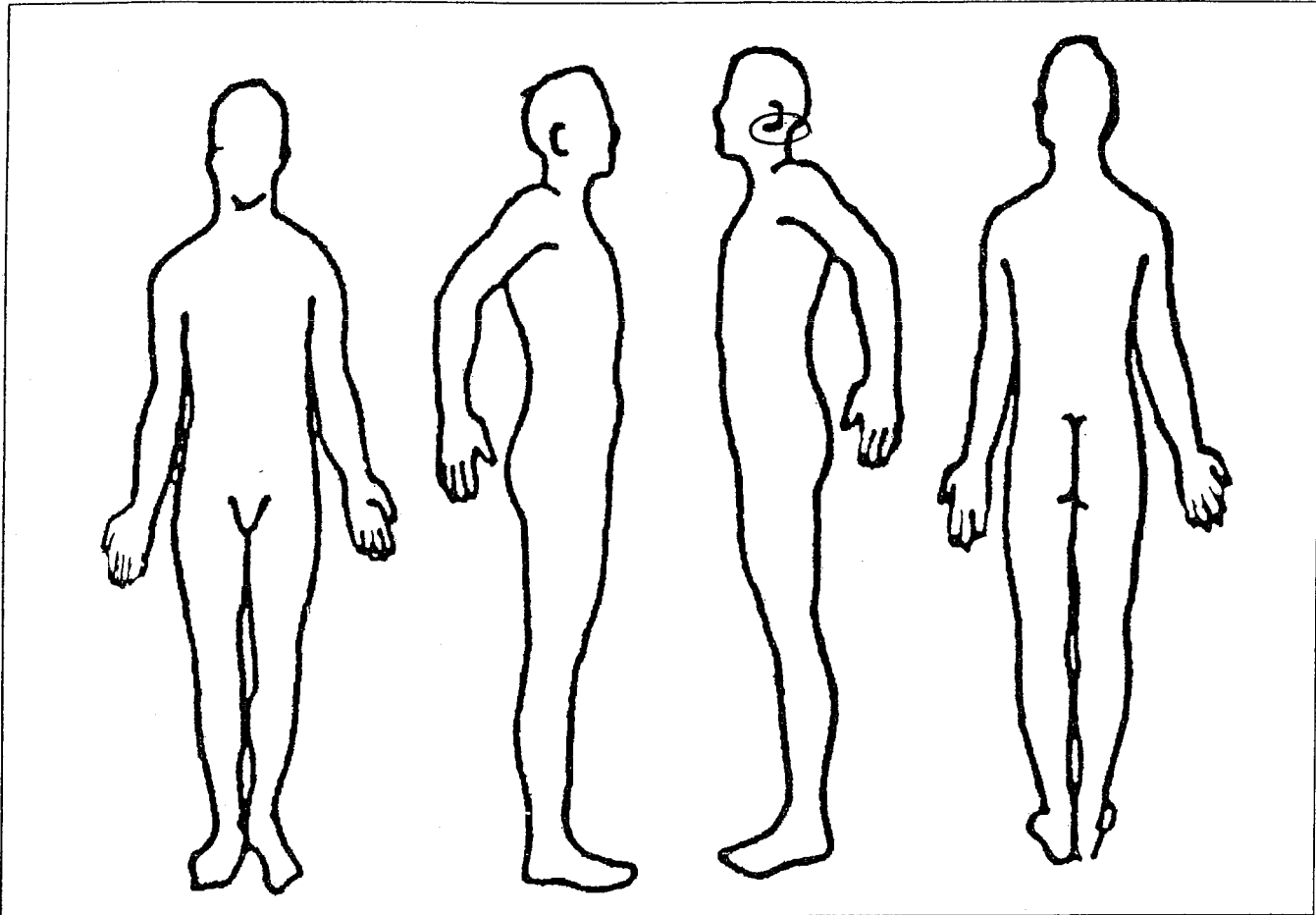
White - Health Record

Canary - Emergency Room Record

Pink - Local Requirements

Ex: A-3

DEPARTMENT OF CORRECTIONS
OFFICE OF HEALTH SERVICES
DIAGRAM OF INJURY

Date of occurrence 11-28-02Time of occurrence approx 0845☐ No injury identified

Description of injury (L) ↓ ear lobe c̄ purple bruising, minimal edema, &
approx. 1cm red line. outer edges reddened. also c̄ small
area of bruising behind (L) ear on scalp near hairline. I/m
c/o of being hit on back of the head & stomach. Abd.
5 marks or edema. & edema on rear of head.

J. Conger
Staff Signature

J. CONGER, SRM
Washington CI

Borroto, Ramon Armas
DC# X27467
W/M DOB: 11/22/81
Allergies: POLLEN, NKDA

 This form is not to be amended, revised, or altered
 without approval of the Deputy Director of Health
 Services Administration

CVSA REPORT

To: Inspector JON KRAUS
From: Inspector Jimmy Keen
Subject: RAMON BARROTO X27467

Case#: 02-13942

Date: 1/15/03

Predication

This truth verification examination was predicated upon a request by INSPECTOR KRAUS.

Scope

The scope of this truth verification examination shall be limited to the subjects' honesty as it relates to this investigation.

Report

On **JANUARY 14**, 2003, this agency extended an interview relevant to the issue under investigation. During the pretest interview we formulated a series of **NINE** questions to be used in a **ZOC format**. I obtained the necessary release form, conducted the examination, and hereby submit the results to you. The following questions were interspersed with irrelevant and control questions:

- 1) WAS OTHER STAFF PRESENT WHEN MCDONALD HIT YOUR EAR? YES NDI
- 2) WAS NURSE KENT PRESENT WHEN MCDONALD DROPPED YOU ON YOUR HEAD? YES NDI
- 3)
- 4)

Post Test Interview

During the post test interview the results of the exam(s) were discussed with the subject.

Conclusion

Based on my training and experience, it is in my opinion that the subject was not deceptive in response to the relevant question(s).

The chart(s) was reviewed BY INSPECTOR M. HENDERSON AND SHE CONCURRED.
I am maintaining a copy of this report, the chart(s), and the original release form on file.

This report and the conclusion are not to be used as probable cause for arrest or sole basis for any legal action.

James G. Keen, Senior Inspector _____

cc: INSPECTOR KRAUS
CVSA file

Ex: A-4

STATE OF FLORIDA
DEPARTMENT OF CORRECTIONS

INSPECTION OF SPECIAL HOUSING RECORD

Institution

Warden, Jr.

Housing Area

G1

| TIME | INITIALS | REMARKS | DATE | TIME | INITIALS | REMARKS |
|----------|------------|--------------------------|-------|--------|----------|-------------------------|
| | | Half on in Dorm | 11-28 | 3:11pm | B. McKee | Outside Building |
| | | FOR POWERS. | | | | check complete. |
| 8:30 | BT | med rounds | 11-28 | 3:15pm | B. McKee | Food carts in |
| 8:31 | BT | SEC check | 11-28 | 3:20pm | B. McKee | Off. Stebbins + 2 I/M's |
| 8:59 | BT | SEC check | | | | feeding in G1 + G2 |
| 9:17 | BT | SEC check | | | | Off. Oney + 2 I/M's |
| 9:33 | BT | SEC check | | | | feeding in G3 + G4 |
| 9:38 | BT | Off. Owens in | | | | Formal Count = G1=54 |
| | | TO PASS OUT LAUNDRY | | | | G2=28, G3=24, G4=43 |
| | | ORDERS | | | | T/C=149 |
| 10:00 Am | BT | SEC check | 11-28 | 3:30pm | B. McKee | security check |
| 10:15 A | C. M. Hays | Food carts in | 11-28 | 3:35pm | B. McKee | Clear count |
| 10:36 A | BT | Formal Count T=149 | 11-28 | 4:00p | WJ | Sec ck OK |
| | | Y's 428 324 443 | 11-28 | 4:04 | WJ | SECURITY - 11-28 |
| | | door lock check | 11-28 | 4:30p | B. McKee | security check |
| 10:50 | BT | Clear count | | | | Food carts out. |
| 11:00 | BT | SEC check | 11-28 | 4:41pm | B. McKee | Nurse exits dorm |
| 11:28 | BT | SEC check | 11-28 | 4:55p | B. McKee | Formal count |
| 11:30 A | BT | Begin Programs, | | | | G1=54 G2=28 |
| | | UP STAIRS | | | | G3=24 G4=43 |
| 11:50 A | BT | SEC check | | | | T/C=149 |
| 12:10 P | BT | Formal Count T=149 | 11-28 | 5:15p | B. McKee | Clear count |
| | | Y's 428 324 443 | 11-28 | 5:10pm | B. McKee | security check |
| 12:24 P | BT | Clear count | 11-28 | 5:30pm | B. McKee | security check |
| 12:58 | BT | SEC check | 11-28 | 6:00p | B. McKee | security check |
| 12:29 | BT | SEC check | | | | start program G1 |
| 1:00 P | BT | SEC check | 11-28 | 6:30p | B. McKee | security check |
| 1:23 P | BT | SEC check | 11-28 | 6:51p | B. McKee | Capt. Higgins in |
| 1:30 P | BT | 2nd shift off duty | | | | OK check |
| 1:30 P | WJ | 3rd shift on duty | 11-28 | 7:00p | B. McKee | security check |
| | | ALL KEYS AND EQUIPMENT | 11-28 | 7:15p | B. McKee | PBA# 144 tested |
| | | AND OTC MEDS. fixed | 11-28 | 7:20p | B. McKee | security check |
| | | FROM 2ND SHIFT | 11-28 | 8:00p | B. McKee | Security check |
| | | Sgt. McKee's OTC LAUNDRY | | | | Sgt. English in |
| | | OFF. WELCH OTC SHIRTS | | | | for DR's |
| | | OFF. ONEY OTC STEBBINS | 11-28 | 8:30p | B. McKee | Security check |
| | | SHIFT OTC Capt. Higgins | | | | showers in G3 |
| 3:05pm | B. McKee | All doors, locks and | | | | + G4 complete |
| | | windows physically | 11/28 | 8:50 P | WJ | IN HOUSE MOVE 2/M |
| | | checked and secure. | | | | TOOKER DANIEL G21166 |
| | | G1=54, G2=28, G3=24 | | | | FROM G12042 TO G4 2052 |
| | | G4=43, T/C=149 | 11/28 | 8:55 P | WJ | COUNT RECALC |

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For "remarks" note the name and number of any inmate who requires special handling and give a brief explanation, as much space as is required. The supervising officer on duty, medical staff, or Disciplinary Committee members should enter subsequent information concerning this inmate on the "Daily Record of Segregation" Form DC6-229 for that inmate.

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INSPECTION OF SPECIAL HOUSING RECORD

~~IVB~~ G

| 2 | TIME | INITIALS | REMARKS | DATE | TIME | INITIALS | REMARKS |
|---|-------|-----------|------------------------------------|------|------|----------|---------|
| | 9:00P | Loj | MASTER Roster Count IN PROGRESS | | | | |
| | | | 2-33 62-28 63-24 64-44 | | | | |
| | | | T/C 149 | | | | |
| | 9:30P | Loj | Security check, OK | | | | |
| | | | All cell doors, locks | | | | |
| | | | and windows check | | | | |
| | | | ed and secure | | | | |
| | 10:00 | B.M. Kene | security check, | | | | |
| | 10:30 | B.M. Kene | security check | | | | |
| | | | all secure | | | | |

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STATE OF FLORIDA
DEPARTMENT OF CORRECTIONS

INSPECTION OF SPECIAL HOUSING RECORD

tion Washington CI.

Housing Area G. Dorm

| TIME | INITIALS | REMARKS | DATE | TIME | INITIALS | REMARKS |
|-------|----------|---|-------|-------|-------------|---|
| 3:15A | aaB | ofc. Smith + 4 ocellins exit | 11-28 | 5:39A | aaB | exit G4 into G3 for trays |
| 3:23A | aaB | G1 enters G4 to clean | 11-28 | 5:42A | aaB | ofc. Johnson + 2 ocellins exit |
| 3:28A | aaB | ofc. Smith ofc. Johnson + 4 ocellins exit G4 into G3 to clean | 11-28 | 5:47A | aaB | G1 enters G2 for trays |
| 3:28A | aaB | ofc. Johnson conducting Security check G3 | 11-28 | 5:52A | aaB | ofc. Smith + 2 ocellins exit G3 into G4 for trays |
| 3:29A | aaB | ofc. Smith + 4 ocellins exit G3 into G2 to clean | 11-28 | 6:02A | aaB | ofc. Johnson + 2 ocellins exit G2 into G4 |
| 3:30A | aaB | ofc. Johnson exit G3 | 11-28 | 6:02A | aaB | 1st food cart exits down |
| 3:32A | aaB | ofc. Smith + 4 ocellins exit G4 for Security check | 11-28 | 6:18A | aaB | Count 1 Line Control Notified |
| 3:32A | aaB | ofc. Johnson exits G1 enters G1 for Security check | | | | G1-54 G2-28 G3-24 G4-43 |
| 3:34A | aaB | ofc. Johnson exits G1 enters G2 for Security check | 11-28 | 6:20A | aaB | 76149 ofc. Smith ofc. Johnson count |
| 3:46A | aaB | ofc. Smith, Johnson + 4 ocellins exit G2 into G1 to clean | 11-28 | 6:33A | aaB | Anders put up 2nd Food cart exit down |
| 3:51A | aaB | Nurse comes into room | | | | Clear count ofc. Smith enters G2 for Security check |
| 3:53A | aaB | ofc. Johnson Nurse comes into G1 to pass med's. | 11-28 | 6:35A | aaB | ofc. Johnson enters G4 for Security check |
| 3:57A | aaB | ofc. Smith Nurse comes exit G1 enters G2 for med's + S/C | | | | ofc. Smith exits G2 enters G1 for Sec. Ch. ofc. Johnson exits G4 enters G3 for Security check |
| 4:00A | aaB | ofc. Smith Nurse comes exit G2 into G3 for med's + S/C | 11-28 | 7:00A | aaB | Security check Security Bars windows + beds checked |
| 4:02A | aaB | ofc. Smith Nurse comes exit G3 into G4 for med's + Sec. Ch. | 11-28 | 7:10A | C. McKelvey | 1st Shift off Duty |
| 4:15A | aaB | Count time Control Notified G1-54 G2-28 G3-24 G4-43 76149 ofc. Smith ofc. Johnson count | | | | 2nd Shift on Duty OK |
| 4:27A | aaB | Clear count | | | | Capt. H. H. H. 3rd C. McKelvey |
| 4:30A | aaB | Light on in Room | | | | ofc. Pate, ofc. Anderson, ofc. Springfield + ofc. McAnally |
| 5:04A | aaB | Food carts arrived | | | | Revised call logs + equipment. 1st aid kit sealed. |
| 5:07A | aaB | ofc. Smith + 2 ocellins enter G3 to feed ofc. Johnson + 2 ocellins enter G1 to feed | | | | OK med's accounted for. ofc's conduct Cell room + lock checks, sec check. |
| 5:16A | aaB | ofc. Smith + 2 ocellins exit G3 enters G4 to feed | | | | G1-54 G2-28 G3-24 G4-43 |
| 5:24A | aaB | ofc. Johnson + 2 ocellins exit G1 enters G2 to feed | 11-28 | 7:20A | C. McKelvey | 7:1149 |
| 5:35A | aaB | ofc. Johnson + 2 ocellins exit G2 enters G1 for trays | 11-28 | 7:50A | BUTTS | Sec Check |
| 5:39A | aaB | ofc. Smith + 2 ocellins | 11-28 | 8:01 | BUTTS | Sec check |
| | | | 11-28 | 8:02 | BUTTS | COL. TIFFT & Capt |

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der "remarks" note the name and number of any inmate who requires special handling and give a brief explanation, as much space is required. The supervising officer on duty, medical staff, or Disciplinary Committee members should enter subsequent information concerning this inmate on the "Daily Record of Segregation" Form DC6-229 for that date.

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STATE OF FLORIDA
DEPARTMENT OF CORRECTIONS

INSPECTION OF SPECIAL HOUSING RECORD

Institution

Washington C.I.

Housing Area

G Down

| TIME | INITIALS | REMARKS | DATE | TIME | INITIALS | REMARKS |
|--------|----------|--|----------|--------|----------|--|
| 11:00 | aaB | 1 st Shift on Duty, aaB, Giff. Co. Aker, Sgt. Rozenow, Giff. Johnson, Giff. Smith relieved | 11-28-02 | 11:59A | aaB | Giff. Smith enters G1 for Security check |
| | | 3 rd Shift of all duties + equip. ment. Fire alarm system OK, fire extinguisher OK. | 11-28-02 | 1:01A | aaB | Giff. Smith exits G1 gates G2 for Security check |
| | | Final audit Box Seal. Security check OK. T/C 149. Security bars, windows, & locks checked by Giff. Johnson, Giff. Smith | 11-28-02 | 1:03A | aaB | Giff. Smith exits G2 gates G3 for Security check |
| | | OK. T/C. Meads OK. | 11-28 | 1:05A | aaB | Giff. Smith exits G3 gates G4 for Security check |
| | | | 11-28 | 1:23A | aaB | Clear count Giff. Johnson enters G1 for Security check |
| 11:10P | aaB | Count time control notified G1-54 G2-28 G3-24 G4-43 T/C 149 Giff. Johnson Giff. Smith clear count. | 11-28 | 1:25A | aaB | Giff. Johnson exits G1 gates G2 for Security check |
| 11:14P | aaB | Giff. Smith conducts gate single building check | 11-28 | 1:27A | aaB | Giff. Johnson exits G2 gates G3 for Security check |
| 11:20P | aaB | Clear count | 11-28 | 1:29A | aaB | Giff. Johnson exits G3 gates G4 for Security check |
| 11:27P | aaB | Giff. Johnson enters G1 for Security check | 11-28 | 2A | aaB | Count time control notified G1-54 G2-28 G3-24 G4-43 T/C 149 Giff. Smith Giff. Johnson clear count |
| 11:29P | aaB | Giff. Johnson exits G1 gates G2 for Security check | 11-28 | 2:26A | aaB | Giff. Johnson enters G1 for Security check |
| 11:31P | aaB | Giff. Johnson exits G2 gates G3 for Security check | 11-28 | 2:28A | aaB | Giff. Johnson exits G1 gates G2 for Security check |
| 11:33P | aaB | Giff. Johnson exits G3 gates G4 for Security check | 11-28 | 2:30A | aaB | Giff. Johnson exits G2 gates G3 for Security check |
| 11:58P | aaB | Giff. Smith enters G1 for Security check. T/C 149 | 11-28 | 2:32A | aaB | Giff. Johnson exits G3 gates G4 for Security check |
| 12:01A | aaB | Giff. Smith exits G1 gates G2 for Security check | 11-28 | 2:45A | aaB | Informal count 149 |
| 12:03A | aaB | Giff. Smith exits G2 gates G3 for Security check | 11-28 | 2:54A | aaB | Giff. Smith, Giff. O.F.C. Johnson check |
| 12:05A | aaB | Giff. Smith exits G3 gates G4 for Security check. Clear count | 11-28 | 3A | aaB | Clear count |
| 12:32A | aaB | Giff. Johnson enters G1 for Security check | 11-28 | 3:04A | aaB | Giff. Smith enters G4 for Security check |
| 12:34A | aaB | Giff. Johnson exits G1 gates G2 for Security check | 11-28 | 3:04A | aaB | Giff. Smith exits G4 gates G3 for Security check |
| 12:36A | aaB | Giff. Johnson exits G2 gates G3 for Security check | 11-28 | 3:06A | aaB | Giff. Smith exits G3 gates G2 for Security check |
| 12:38A | aaB | Giff. Johnson exits G3 gates G4 for Security check | 11-28 | 3:08A | aaB | Giff. Smith exits G2 gates G1 for Security check |
| | | | | | | + get another on the chain |

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**FLORIDA DEPARTMENT OF CORRECTIONS
CORRECTIVE ACTION/DISPOSITION REPORT**

(This form must be typed. Complete a form for each subject.)

This Section To Be Completed By The Office Of The Inspector General

Case #: 02-13942 Facility: Washington Correctional Institution
 IG Field Office: Tallahassee Institutional Region: I
 Name: McDonald, Larry #/Position: Correctional Officer
 Incident Narrative/Allegations: Physical Abuse

ACTION TAKEN

This Section To Be Completed By Appropriate Disciplining Official.

EMPLOYEE: (Name and Title) McDonald, Larry, Correctional Officer

Allegations are: Substantiated ~~Unsubstantiated~~ Exonerated

Action Taken:

Counseling Reprimand Suspension
Dismissal Resignation Other None

Comments: The evidence obtained during the course of this investigation is not sufficient to support the allegation of physical abuse by Officer McDonald.

Approving Authority Signature/Title: H. D. Alford, Warden Date 03/26/03

Date Subject Notified: March 26, 2003

INMATE/OFFENDER: (Name and DC#) _____

Action Taken/Comments: _____

This Section For Whistle Blowers Act Cases: 112.3189 Florida Statutes

James V. Crosby, Jr.
Secretary

EXHIBIT

2

Exhibit Z

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

RONALD CURTIS MAYS,

Plaintiff,

v.

Case No. 3:04-cv-737-J-20MMH

CHRISTOPHER S. REWIS, et al.,

Defendants.

ORDER

I. Status

Plaintiff, an inmate of the Florida penal system who is proceeding pro se and in forma pauperis, initiated this action by filing a civil rights complaint (Doc. #1) (hereinafter Complaint) pursuant to 42 U.S.C. § 1983 on August 30, 2004. The only remaining Defendant is Christopher S. Rewis, a correctional officer employed by the Florida Department of Corrections.¹ The only remaining claim is the claim of assault/excessive force against Defendant Rewis. As relief, Plaintiff seeks nominal, compensatory and punitive damages. Finally, he also seeks injunctive relief to be transferred to a different institution.

¹ Defendants V. E. Culverson, S. L. Green, L. Scott, R. L. Polk and S. Brunt were dismissed from the action without prejudice on September 10, 2004. See the Court's Order (Doc. #4), filed September 10, 2004.

Defendant Rewis filed a Motion for Summary Judgment (Doc. #10) on April 26, 2005. On May 9, 2005, Plaintiff filed his Opposition to Defendant's Motion for Summary Judgment.²

II. Summary Judgment Standard

With respect to the standard for granting summary judgment, the Eleventh Circuit Court of Appeals has stated:

[S]ummary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S.Ct. 2548, 2552, 91 L.Ed.2d 265 (1986).

In re Optical Technologies, Inc., 246 F.3d 1332, 1334 (11th Cir. 2001).

The parties' respective burdens and the Court's responsibilities are outlined as follows:

The party seeking summary judgment bears the initial burden to demonstrate to the district court the basis for its motion for summary judgment and identify those portions of the pleadings, depositions, answers to interrogatories, and admissions which it believes show an absence of any genuine issue of material fact. Taylor v. Espy, 816 F.Supp. 1553, 1556 (N.D. Ga. 1993) (citation omitted). In assessing whether the movant has met this

² Plaintiff was notified of the provisions of Rule 56 of the Federal Rules of Civil Procedure and given explanatory admonitions. See the Court's Order (Doc. #5), filed November 17, 2004.

burden, the district court must review the evidence and all factual inferences drawn therefrom, in the light most favorable to the non-moving party. Welch v. Celotex Corp., 951 F.2d 1235, 1237 (11th Cir. 1992); Rollins v. TechSouth, Inc., 833 F.2d 1525, 1528 (11th Cir. 1987). If the movant successfully discharges its burden, the burden then shifts to the non-movant to establish, by going beyond the pleadings, that there exist genuine issues of material fact. Matsushita Electric Industrial Co. v. Zenith Radio Corp.[,], 475 U.S. 574, 586-87, 106 S.Ct. 1348, 1355-56, 89 L.Ed.2d 538 (1986); Clark v. Coats & Clark, Inc., 929 F.2d 604, 608 (11th Cir. 1991).

Applicable substantive law will identify those facts that are material. Anderson v. Liberty Lobby, 477 U.S. 242, 248, 106 S.Ct. 2505, 2510, 91 L.Ed.2d 202 (1986). Genuine disputes are those in which the evidence is such that a reasonable jury could return a verdict for the non-movant. Id. For factual issues to be considered genuine, they must have a real basis in the record. Matsushita, 475 U.S. at 586-87, 106 S.Ct. at 1355-56. It is not part of the court's function, when deciding a motion for summary judgment, to decide issues of material fact, but rather determine whether such issues exist to be tried. Anderson, 477 U.S. at 249, 106 S.Ct. at 2135. The Court must avoid weighing conflicting evidence or making credibility determinations. Id. at 255, 106 S.Ct. at 2513-14. Instead, "[t]he evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor." Id. Where a reasonable fact finder may "draw more than one inference from the facts, and that inference creates a general issue of material fact, then the court should refuse to grant summary judgment." Barfield v. Brierton, 883 F.2d 923, 933-34 (11th Cir. 1989) (citation omitted).

Hairston v. Gainesville Sun Pub. Co., 9 F.3d 913, 918-19 (11th Cir. 1993); see Mulhall v. Advance Sec. Inc., 19 F.3d 586, 589-90 (11th Cir.), cert. denied, 513 U.S. 919 (1994).

"It is true that on a motion for summary judgment, all reasonable inferences must be made in favor of the non-moving party." Cuesta v. School Bd. of Miami-Dade County, 285 F.3d 962, 970 (11th Cir. 2002) (citation omitted). "A court need not permit a case to go to a jury, however, when the inferences that are drawn from the evidence, and upon which the non-movant relies, are 'implausible.'" Id. (citations omitted).

If a reasonable jury could not find in favor of the nonmoving party, no genuine issue of material fact does exist; and summary judgment is proper. Beal v. Paramount Pictures Corp., 20 F.3d 454, 459 (11th Cir. 1994). A mere scintilla of evidence in support of the nonmoving party will not suffice to overcome a motion for summary judgment. Allen v. Tyson Foods, Inc., 121 F.3d 642, 646 (11th Cir. 1997). As Fed.R.Civ.P. 56(e) states, "When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial."

Young v. City of Palm Bay, Fla., 358 F.3d 859, 860 (11th Cir. 2004). Thus, "[s]ummary judgment should be granted when, after an adequate time for discovery, a party fails to make a showing sufficient to establish the existence of an essential element of

that party's case." Nolen v. Boca Raton Community Hospital, Inc., 373 F.3d 1151, 1154 (11th Cir. 2004) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986)).

III. Allegations in the Complaint

Plaintiff alleges the following in the Complaint concerning the assault/excessive use of force claim. He states that on December 17, 2003, when returning to his cell after outdoor exercise, Defendant Rewis ordered Plaintiff to hurry up and get to his cell. Plaintiff trotted to his cell, and prior to entering the cell, Rewis struck Plaintiff in the stomach with his knee. Plaintiff fell against the guardrail. Plaintiff states this strike caused extreme pain and he suffered from diarrhea and "other complications to the stomach." Complaint at 9. Plaintiff states that he was handcuffed at the time of the incident and he presented no threat to security.

IV. Assault/Excessive Use of Force

The unnecessary and wanton infliction of pain constitutes cruel and unusual punishment forbidden by the Eighth Amendment. Hudson v. McMillian, 503 U.S. 1, 5 (1992) (citations omitted). When prison officials are accused of using excessive physical force, the initial inquiry is that set forth in Whitley v. Albers, 475 U.S. 312, 320-21 (1986): whether the force was applied in a good-faith effort to maintain or restore discipline, or maliciously

and sadistically to cause harm. Hudson v. McMillian, 503 U.S. at 6-7.

The Hudson Court rejected a "significant injury" requirement. The absence of serious injury alone is insufficient to dismiss a prisoner's Eighth Amendment claim. Hudson v. McMillian, 503 U.S. at 7. "When prison officials maliciously and sadistically use force to cause harm upon an inmate, contemporary standards of decency always are violated." Id. at 9 (citation omitted). Such is true whether or not significant injury is evident. Id. However, not every malevolent touch by a prison guard gives rise to a federal cause of action. Id. (citing Johnson v. Glick, 481 F.2d 1028, 1033 (2nd Cir. 1973) ("Not every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers, violates a prisoner's constitutional rights"))).

The Eighth Amendment's prohibition of "cruel and unusual" punishments necessarily excludes from constitutional recognition de minimis uses of physical force, provided that the use of force is not a sort "'repugnant to the conscience of mankind.'" Whitley, 475 U.S., at 327, 106 S.Ct., at 1088 (quoting Estelle, supra, 429 U.S., at 106, 97 S.Ct., at 292) (internal quotation marks omitted).

Id. at 9-10.

Plaintiff alleges that Defendant Rewis struck him in the stomach with his knee, and the pain from this strike caused Plaintiff to fall against the guardrail. As a result, Plaintiff

claims he suffered from severe pain, which caused diarrhea and other unnamed complications.

The record shows that Plaintiff did not seek medical attention until three days after the alleged incident. Plaintiff's Exhibit B, Inmate Sick-Call Request, filed May 9, 2005. Plaintiff did not write a sick-call request on the December 17, 2002 (the date of the alleged incident), December 18, 2002, or December 19, 2002. The Incident Report, written by Nurse Rawling on December 22, 2003, states that Plaintiff complained about an incident of abuse by a staff member on December 17, 2003, at approximately 10:30 a.m. Defendant's Exhibit B, Incident Report, filed April 26, 2005.

The medical record shows that Plaintiff was seen by William F. Mathews, a certified Physician's Assistant, on December 23, 2003. The Plaintiff complained that he had been kneed in the stomach by a correctional officer and he now had diarrhea. Defendant's Exhibit E1, Emergency Room Record, filed April 26, 2005. Under the assessment summary, it was recorded that Plaintiff stated he suffered a blow to the abdomen seven days ago, he denied pain or discomfort, and his only medical complaint was having gone from one bowel movement a day to two bowel movements per day. Id. Plaintiff's abdomen was checked and it was found to be protuberant, soft and compliant with good bowel sounds and no tenderness. Id. Additionally, the skin was examined and it was found to be without hematomas, bruising or blood. Id. A rectal examination was

conducted and it showed good tone, no tenderness or masses. Id. Finally, a guaiac test was conducted and it was negative, meaning there was no hidden or visible blood present. Id. See Exhibit F1, Affidavit of William F. Mathews, filed April 26, 2005.

Affiant Mathews states:

My examination of inmate Mays reflected that no new treatment was indicated or needed, that no new area of pathology existed and that no injuries were identified or noted.

My examination of inmate Mays revealed no signs or symptoms that would indicate that Mays had suffered any recent trauma to his abdomen.

Id. (numerals omitted).

In sum, the record demonstrates that there was no evidence that Plaintiff had visible injuries or requested medical attention after the alleged attack.³ There are no circumstances described to the Court which prevented Plaintiff from writing a sick-call request on December 17, 2003, if he were in extreme pain or

³ Plaintiff states in his Affidavit that he asked Officer Rewis immediately after the incident that he be taken to be examined by medical personnel. He has offered no evidence and there is nothing in the record to support his claim that he sought medical attention on that date, other than his own affidavit or complaint. This "mere scintilla" of evidence in the form of his own statements is not sufficient to preclude summary judgment. Plaintiff did not write a sick-call request until December 20, 2003. Thereafter, Plaintiff was seen by medical personnel, and no injuries were found.

injured. When Plaintiff was seen on December 23, 2003, he denied any pain or discomfort.

A *de minimis* use of force cannot support a claim for excessive use of force. The medical records do not substantiate Plaintiff's claim of an injury to his stomach. Plaintiff has presented, at most, a common law tort of assault and battery. This case simply does not present a substantial federal question; it relates to an isolated "malevolent" touch or *de minimis* physical force that does not rise to the level of an Eighth Amendment constitutional tort involving the infliction of cruel and unusual punishment.⁴ See Hudson v. McMillian, 503 U.S. at 9 (citing Johnson v. Glick, 481 F.2d 1028, 1033 (2nd Cir. 1973)).

The Court agrees with Defendant that Plaintiff has failed to describe and submit sufficient evidence supporting his claim that he suffered actual physical injury. Thus, this action is barred by 42 U.S.C. § 1997e(e). See Motion for Summary Judgment at 9-11. Plaintiff's unsupported and conclusory allegations that he suffered an injury to his stomach are insufficient to withstand the

⁴ The Affidavit of Christopher S. Rewis states that as Plaintiff approached his cell, he stumbled or lost his balance before reaching his cell. Rewis attests that he did not strike Plaintiff with his knee or any part of his body. Defendant's Exhibit C1, filed April 26, 2005. Plaintiff states that Rewis struck him with his knee, causing Plaintiff to fall back against the guardrail due to the pain. Whatever contact took place, if any took place, was not more than *de minimis* physical force or a malevolent shove.

Defendant's motion for summary judgment. "Unless it appears that the evidence, viewed in the light most favorable to the plaintiff, will support a reliable inference of wantonness in the infliction of pain under the standard we have described, the case should not go to the jury." Brown v. Smith, 813 F.2d 1187, 1189 (11th Cir. 1987) (per curiam).

V. State Law Claim

To the extent that Plaintiff has raised a pendent state law claim of assault and battery, this Court may decline to exercise supplemental jurisdiction over the state law claim since no basis for original federal jurisdiction exists. See Cook ex rel. v. Estate of Tessier v. Sheriff of Monroe County, Fla., 402 F.3d 1092, 1123 (11th Cir. 2005). In light of the fact that no federal constitutional claims remain in this action, the Court declines to accept pendent jurisdiction for the state law claim of assault and battery.

Accordingly, it is now

ORDERED AND ADJUDGED:

1. Defendant's April 26, 2005, Motion for Summary Judgment (Doc. #10) is **GRANTED**, and the Clerk of the Court shall enter judgment in favor of Defendant Christopher S. Rewis and against the Plaintiff on the claim of assault/excessive force.

2. The state law claim of assault and battery is **DISMISSED WITHOUT PREJUDICE**.

2. The Clerk of the Court shall enter judgment that Defendants V. E. Culverson, S. L. Green, L. Scott, R. L. Polk and S. Brunt are **DISMISSED** from the action without prejudice. See the Court's Order (Doc. #4) at 6, filed September 10, 2004.

3. The Clerk of the Court shall close this case.

DONE AND ORDERED at Jacksonville, Florida, this 17 day of November, 2005.


UNITED STATES DISTRICT JUDGE

sa 11/4

C:

Ronald Curtis Mays
Ass't A.G. (Hiers)